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REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

on the negotiation of bilateral arrangements or agreements between EU Member States and the United Kingdom, relating to administrative cooperation in the field of VAT or recovery assistance for any taxes, in accordance with Article 8(2) of Council Decision (EU) 2021/689

Introduction

Article 8(2) of Council Decision (EU) 2021/689[1] requires the Commission to report to the European Parliament and to the Council on the draft agreements or arrangements negotiated between EU Member States and the United Kingdom, relating to administrative cooperation in the field of VAT or recovery assistance for taxes or duties.

Administrative cooperation for VAT and customs duties and recovery assistance for VAT, excise duties and customs duties are covered by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, (hereinafter referred to as the 'Trade and Cooperation Agreement'), and in particular by the Protocol on administrative cooperation and combating fraud in the field of VAT and on mutual assistance for the recovery of claims relating to taxes and duties (hereinafter referred to as the 'Protocol'), attached to this Trade and Cooperation Agreement.

When Member States intend to negotiate any bilateral agreement or arrangement with the United Kingdom in the field of VAT administrative cooperation or recovery assistance for any taxes or duties, they need to consult the Commission. They may only sign and conclude such an arrangement or agreement with the United Kingdom once the Commission has confirmed the validity of the arrangement or agreement concerned against EU law.

Similarly, when negotiating a memorandum of understanding implementing another international agreement providing for recovery assistance, national authorities have to ensure that the memorandum of understanding does not contain any provisions that undermine the functioning of the Trade and Cooperation Agreement or of the internal market and that put at risk the attainment of an objective of the Union's external action in the recovery assistance area, or are otherwise prejudicial to the Union's interests.[2]

This means that the taxes and duties covered by the administrative cooperation and recovery assistance provisions of the Trade and Cooperation Agreement should not be covered by the corresponding provisions of agreements and memorandums of understanding that Member States negotiate with the UK. A mere statement that EU law takes precedence is insufficient.

Moreover, bilateral negotiations on specific elements – e.g. any change to the threshold in Article 33(4) of the Protocol – cannot be envisaged, since the provisions concerned are part of the global Trade and Cooperation Agreement, which is the result of multisector negotiations. Hence, modifying this outcome in one area can never be done without considering the whole of the agreement, especially in areas linked to the trade part of the agreement which touch upon a very large number of economic activities. In that context, a unilateral Member State negotiation on such a specific element would be contrary to the principle of sincere cooperation, laid down in Article 4(3) of the Treaty on European Union.

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1 Council Decision (EU) 2021/689 of 29 April 2021 on the conclusion, on behalf of the Union, of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, (hereinafter referred to as the 'Trade and Cooperation Agreement') and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information, OJ L 149 of 30.4.2021, p. 2.

2 Article 7 of Council Decision 2021/689 of 29 April 2021.

Further, administrative cooperation and recovery assistance under any international agreement between a Member State and the UK are of course also excluded in situations where this administrative cooperation and recovery assistance are covered by the UK Withdrawal agreement[3] and its Protocol on Ireland/Northern Ireland, and by the Protocol on mutual administrative assistance in customs matters, attached to the Trade and Cooperation Agreement.

With regard to recovery assistance for taxes not covered by the EU agreements, the Commission has reminded the Member States that they have the option to reduce the administrative and budgetary burden linked to translation needs by opting for the use of the electronic communication network and the standard forms adopted for the implementation of the Protocol, in accordance with art. 38(4) of this protocol. Art. PVAT.38(4) of the Protocol provides that 'the electronic communication network and the standard forms adopted for the implementation of this Protocol may also be used for recovery assistance regarding other claims than the claims referred to in point (b) of paragraph 1 of Article PVAT.2, if such recovery assistance is possible under other bilateral or multilateral legally binding instruments on administrative cooperation between the States'. It is in the interest of the EU Member States – and the UK authorities – to effectively apply these standard forms (request forms and Uniform notification form (UNF) and Uniform instrument permitting enforcement in the requested State (UIPE)) adopted under this Protocol for recovery assistance concerning other taxes, with the related advantages of automated translation, with direct legal effect of the UNF and UIPE (without any need for recognition in the requested State) and the possibility to send a combined request in cases of multiple claims falling within the scope of respectively the EU-UK agreements and the other international agreements that apply between EU Member States and the UK.

The fact that a memorandum of understanding only intends to describe the interpretation of an existing multilateral agreement[4] by the competent authorities does not justify any derogation to the above rules.

From the response provided by the EU Member States, it appears that the UK authorities have approached several Member States to conclude a double taxation agreement, containing provisions on administrative cooperation and tax recovery assistance, or a memorandum of understanding on the application of bilateral agreements providing for tax recovery assistance or on the application of the multilateral convention on mutual administrative assistance in tax matters.

The table below summarises the cases brought to the attention of the Commission so far.

[3] Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29 of 31.1.2020, p. 7.

[4] In particular the multilateral convention on mutual administrative assistance in tax matters, adopted by the Council of Europe and the OECD. On this point, the Commission notes that no Member State ever reported to have concluded bilateral arrangements with the United Kingdom for a wider cooperation or assistance than under the Council Regulation (EU) No 904/2010 on administrative VAT cooperation and Council Directive 2010/24/EU on tax recovery assistance (see Article 60 of Regulation (EU) No 904/2010 and Article 24 of Directive 2010/24/EU).

Member State	Type of agreement	Status	Actions taken/envisaged
Austria	MoU on tax recovery assistance	Signed	Interpretative statement published by the Member State.[5] Member State commitment to amend the double tax convention and MoU at the next occasion.
Luxembourg	Double taxation convention	Signed	Interpretative statement published by the Member State.[6] Member State commitment to amend the double tax convention at the next occasion.
Lithuania	MoU on tax recovery assistance	Ongoing	No draft received by the Commission.
Spain	MoU on tax recovery assistance	Ongoing	No draft received by the Commission.
Poland	MoU on tax recovery assistance	Ongoing	Comments provided by the Commission.
Sweden	MoU on tax recovery assistance	Ongoing	Comments provided by the Commission.
Czechia	MoU on tax recovery assistance	Ongoing	Comments provided by the Commission.
Belgium	MoU on tax recovery assistance	Ongoing	Comments provided by the Commission.
Portugal	MoU on tax recovery assistance	Ongoing	Comments provided by the Commission.
Czechia	Double taxation convention	Ongoing	Czechia to submit text to the Commission.
Portugal	Double taxation convention	Ongoing	Comments provided by the Commission.
Netherlands	MoU on tax recovery assistance	Ongoing	Comments provided by the Commission.
Germany	MoU on tax recovery assistance	Ongoing	Comments provided by the Commission.
Romania	Double taxation convention	Ongoing	Comments provided by the Commission.

The Commission remains committed to provide Member States the appropriate advice to ensure that the bilateral texts they negotiate are compatible with the Trade and Cooperation Agreement and the Protocol and will take all appropriate actions to deliver on that objective.

[5] Instruction of the Federal Ministry of Finance of 8 April 2022, 2022-0.201.316, published in relation to the double tax convention with the United Kingdom; https://www.bmf.gv.at/themen/steuern/internationales-steuerrecht/doppelbesteuerungsabkommen/dba-liste.html

[6] https://mfin.gouvernement.lu/fr/actualites/2023/condigblu.html